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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of

Billed Party Preference for
InterLATA 0+ Calls

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CC Docket No. 92-77

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FEDERAL COMMUNICATIONS COMMISSION

COMMENTS OF GTE

GTE Service Corporation and its affiliated
domestic telephone, wireless and long
distance companies

Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 463-5214

July 17, 1996

THEIR ATTORNEY


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SUMMARY

Although the Commission has consistently found BPP to be a solution to the problem of OSP consumer abuse, adoption of BPP has been frustrated by high capital costs and resultant cost recovery impacts on OSP rates. Because consumers now have many more options available to them that allow an informed choice of an OSP, GTE does not believe that applying benchmarks to the entire industry is necessary. Instead, the remedy should be directed to the limited number of abusing carriers.

If the Commission, nonetheless, determines continued rate regulation to be necessary, GTE strongly urges the Commission to establish benchmarks for consumer rates based on the Ameritech proposal (120% of the highest rate of the three largest IXC's) and to require OSPs that charge rates above a benchmark to orally disclose such charges to consumers before connecting a 0+ call. GTE believes that the benchmarking proposals in this SFNPRM have some merit, offer appropriate alternatives to previous BPP proposals, and provide the consumer protection benefits that have been the Commission's goals since initiating this proceeding.

GTE also urges the Commission to continue to require OSPs to file tariff requirements and to refrain from mandating BPP requirements for inmate-only telephones.

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GTE Service Corporation ("GTE"), on behalf of its affiliated domestic telephone, wireless and long distance companies, respectfully submits these Comments in response to the Second Further Notice of Proposed Rulemaking ("SFNPRM"), FCC No. 96-253, released June 6, 1996, in the above-captioned proceeding.

INTRODUCTION

Over the years, the Commission has considered several Billed Party Preference ("BPP") proposals. Although there has been improvement in the consumer's ability to make "informed choices" at payphones and other locations from which 0+ calls are made, the Commission continues to express concern over the high rates charged by some Operator Service Providers ("OSPs"). In the SFNPRM, the Commission proposes alternatives to BPP for OSPs.

The SFNPRM tentatively proposes to establish benchmarks for OSPs' consumer rates and associated charges and to require OSPs to disclose the applicable charges for a call to consumers orally before connecting a call if their rates are higher than a certain percentage above a composite of the 0+ rates charged by the three largest

interstate, interexchange carriers. The Commission also seeks comment on requiring all OSPs to disclose their rates on all 0+ calls; filing of informational tariffs for interstate operator services and forbearance from tariff-filing requirements applicable to OSPs; considering some alternative remedy than BPP for calls from inmate-only telephones in prisons; and determining the cost of requiring all OSPs to disclose their rates for each 0+ call from payphones.

Although there have been some problems with the high rates charged by some OSPs, the particular OSPs who charge rates that are “out of line with consumer expectations” has not been determined. Nonetheless, it appears that the number of abusing carriers is limited.¹ Rather than dealing exclusively with the abusers, however, the Commission is proposing additional regulation on all OSPs. While the proposals in the SFNPRM appear to avoid the high costs and cost recovery rate impact of BPP systems previously considered, the solutions proposed in the SFNPRM would require all carriers to monitor their rates in comparison to an established rate level in order to remain in compliance with the rate cap and to avoid further compliance obligations.

I. Should continued regulation be necessary, establishing benchmarks for OSP consumer rates would offer an alternative to BPP and would meet consumer price expectations.

The SFNPRM (at ¶24) seeks comment on the tentative conclusion to set benchmarks for OSPs at a level reflecting consumer expectations. Proposing that the 0+ rates charged by the three largest carriers (AT&T, MCI and Sprint) reasonably reflect

¹ The FCC’s “Common Carrier Scorecard” indicates this number to be very small, of the 67 OSPs included in the scorecard 4 had levels of complaints served per million dollars revenue that were three times those of the other 64. *FCC Common Carrier Scorecard*, Report No. CC 95-69, December 1, 1995 at 9.

consumer expectations, the Commission seeks comment on whether an additional price margin for OSPs would be reasonable. Three specific rate proposals are set forth for comment.

At the outset, GTE does not believe that applying benchmarks to the entire industry is necessary. The Commission has previously found that high rates have been charged by a limited number of carriers. The remedy should be directed to the abusing carriers. As GTE has stated in previous BPP proceedings, "the problem of some OSPs has gone largely unchecked due to an enforcement vacuum at the Commission." No matter what type of BPP system is eventually implemented, "the conduct will not cease until the Commission makes OSPs truly accountable by prosecuting, and when warranted, penalizing them in accordance with the magnitude of their violations."² The Commission has taken some action against abusing OSPs³ and should continue vigilant enforcement. Imposing regulation on the entire industry in the form of rate caps and disclosure requirements, however, adds unwarranted costs and burdens to all.

To encourage market forces to operate, with an eye toward deregulation, the Commission should allow the market forces to work to eliminate out-of-line carriers. If, however, the Commission believes additional regulation of some aspect of the market is needed because of the unscrupulous practices of a few OSPs, it should tailor the regulation to fit and address the specific problem, and should not overregulate an entire industry.

² GTE Reply Comments , CC Docket No. 92-77, filed April 27, 1995 at 3.

³ See, e.g., Operator Comm. Inc. d/b/a Oncor Comm. Inc., Notice Apparent Liability and Forfeiture, 11 FCC Rcd 5647 (1995).

Calculation of benchmarks is difficult because OSP rate structures vary. Trying to force all to comply with a benchmark based on a fixed set of criteria could stifle innovative offerings. The SFNPRM (at ¶26) proposes six characteristics upon which a benchmark could be based. However, a benchmark would only be relevant if a carrier's rate structure is based on the same characteristics. If a carrier uses postalized rates, as opposed to mileage-based rates, for example, rates based on distance are irrelevant. If a carrier uses a peak/off peak structure, as opposed to a day/evening/night structure, a side by side comparison of resultant rates would be extremely difficult. GTE believes using the Commission's six characteristics would force conformity of rate structures, possibly destroying innovative structures which have developed as an outgrowth of competition. Moreover, it would also be difficult to develop benchmark rates which would be used in comparing different carrier's rate structures. Obviously, one size can not fit all in the presence of varied rate structures.

Both the Comptel proposal (SFNPRM at ¶17) and the Ameritech proposal (SFNPRM at ¶18) address some, but not all, of GTE's concerns about benchmarks. The Comptel proposal has an advantage in that its cap is based on call duration, thus permitting some flexibility among carrier rate structures. It would be necessary, however, to manually calculate the price of each duration call in order to verify that the rates used were under the benchmark. The proposals of the Commission and Ameritech, in effect, would require following the mileage-based, time of day sensitive, initial and additional minute pricing structure traditionally used by carriers -- with the consequence of reduced rate structural flexibility. Of the two proposals, Ameritech's provides more flexibility, allowing for more variety in rate structures among carriers.

Benchmarking could be most effective by first determining which particular OSP rate types are the real problem. For example, if the Commission were to identify surcharges and location charges as the specific rates which are often exorbitant, and not per minute charges, the Commission should reasonably target the solution to the problem and benchmark only the surcharge and location charges. This would avoid the problem of trying to make per minute rate structures fit or conform to a benchmark based on the Commission's six characteristics. Alternatively, if certain OSP rates are deemed too high, these rates should be adjusted rather than imposing a burdensome requirement on all OSPs whose rates are not unreasonable.

Assuming, nonetheless, that the Commission decides to establish benchmarks and acceptable benchmark costs can be established, GTE accepts the Commission's conclusion that the rates of the three largest IXC's probably reflect consumer expectations, and represent a satisfactory way to meet consumer OSP rate expectations.⁴ GTE supports the Ameritech proposal, setting the benchmark based upon the highest rate of the three largest interexchange carriers, plus a 20% premium, as the most reasonable. A 20% premium is reasonable because many OSPs use a centralized billing function and incur significantly higher costs due to their smaller

⁴ The wireless rates of GTE's wireless companies -- GTE Airfone, GTE Railfone and GTE Mobilnet -- should not be subject to such a benchmark or disclosure requirements. The end-to-end rate for 0+ calls for these carriers contains both wireless and land-based rate components. Rates of the three largest interexchange carriers cannot be compared with rates which include a wireless component. Additionally, on September 27, 1993, GTE filed a Petition for Reconsideration and/or Waiver (FCC File No. MSD-92-14) seeking a ruling that these entities are not subject to the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"). GTE believes that issues regarding GTE's wireless companies' rates should be addressed in that separate proceeding.

volume of customers. Further, the Ameritech proposal would leave room for pricing innovations and flexibility. An additional premium can easily be supported to address such smaller OSP cost positions issues, while still meeting the Commission's goal of establishing rates that meet consumers' expectations.

II. OSPs who charge rates and/or allow related premises-owner fees totaling more than a given percentage above a benchmark should be required to disclose such charges to consumers orally before connecting the call.

GTE agrees with the Commission's tentative conclusion (SFNPRM at ¶13) that OSPs charging rates above an established benchmark should be required to disclose such charges to consumers orally before connecting any 0+ calls. Placing this disclosure requirement on those OSPs over the benchmark would correctly impose regulation on those parties, and only those parties, whose actions necessitate correction. OSPs and IXC's whose rates fall below the benchmark, however, should not have a similar oral disclosure requirement.

The Commission seeks comment (SFNPRM at ¶17) on the costs and benefits of requiring OSPs to disclose their rates on all 0+ calls. Obviously, there are additional costs involved in quoting rates before the call is completed, whether using a mechanized system or an operator. The additional costs can only be justified for those carriers whose rates are excessive. Carriers with rates below the benchmark should not be required to incur these additional costs.

The Colorado PUC Staff (SFNPRM at ¶14) argues that "most, if not all, [OSP's] have the capability of accessing a data base that provides specific rates for the specific call in question." Even if all OSPs had the capability to disclose their rates prior to

completing the call, mandating such a requirement for all OSPs would be a serious overreaction to the problem and would impose a costly and unnecessary additional step to calls carried by OSPs whose actions have not caused the consumer complaints. Further, contrary to the assertions of the Colorado PUC Staff, OSPs do not have the capability to rate quote the specific calls in question. While current Operator Service System ("OSS") call rating systems, *e.g.*, Automated Coin Telephone Service ("ACTS"), are used to rate coin 1+ calls and to advise consumers how much money to deposit for the first three minutes of a coin call, these systems are not set up to provide the call information proposed by the SFNPRM. Operators can quote consumers call rates prior to a call, but "time and charges" can be provided only upon the completion of the call.

None of 0+ calls of GTE's domestic telephone companies handled on a mechanized basis (about 80%) or on a typical operator-handled basis are currently rated by the OSS. These calls are all rated in the downstream billing process. Mechanized equipment could possibly be enhanced to quote rates prior to the call connection, but this would likely would require significant capital outlays and would involve several years lead time to accomplish. GTE's current mechanized equipment (costing approximately \$22 million in 1993) would most likely require a complete replacement for such a modification. For those calls handled by an operator, the Average Work Time ("AWT") per call to determine and quote cost prior to call completion would likely double, increasing the operator surcharge per call accordingly. For both mechanized and operator-handled 0+ calls, quoting the call cost to consumers would significantly increase call holding time and necessitate additional trunking facilities. Moreover, because call costs would have to be quoted to the billed party, as

opposed to the calling party, the process would be further complicated, requiring additional equipment for processing mechanized calls and additional operators, operator positions and building space for operator-handled calls. GTE's long distance company and, GTE believes, most other OSPs would report similar situations when assessing their equipment for enhancement to quote such call costs.

While consumers would undoubtedly benefit from rate quotes when using abusing OSPs, in most instances, the prior rating is unnecessary. In fact, consumers may be annoyed because of the additional time delay and cost on calls where disclosure is unwanted and unnecessary. GTE believes that to provide such rate quotes would be very costly to those OSPs whose rates are currently acceptable to consumers. There would be little or no public benefit if these costs were mandated to all OSPs.

Consumers may become confused and possibly misinformed if OSPs disclosing rates on calls rated above the benchmark are required to quote rates for maximum or "average" duration calls. Such a requirement could distort the customer's perspective, because the call being placed might have no relation at all to the quoted price. Accordingly, any mandated disclosures should quote the rate for the first minute and additional minutes, not average rates.

III. Forbearing from tariff requirements is inconsistent with benchmark rate regulation and is not appropriate for OSPs at this time.

The SFNPRM contains a confusing mix of efforts to regulate certain rates perceived to be out of line, and efforts to deregulate a segment of the industry whose primary business is providing 0+ service at locations where consumers may not have

easy to use alternative carrier choices. If the Commission has determined that rate regulation (specifically the setting of benchmarks for OSPs) is necessary and in the public interest, eliminating the tariff requirement for OSPs would not be in the public interest. Forbearing from tariff requirements, essentially deregulating the very segment of the industry that is the apparent source of the high rates over which the Commission is concerned, does not fit with rate regulation and benchmarking, as proposed in other parts of the SFNPRM.

If benchmark rates are set, and if tariffs are filed, the Commission should have no need for additional certification of rate levels. The continuation of tariff filings would require no change from current procedures and would give consumers an additional information source to assist in making an informed choice of carriers. Tariff filing requirements should continue to be defined by Section 61.52. Tariffs should be required to be filed for specific rates, not simply a range rates. GTE supports decreased regulation in the form of one day notice tariffs, but cannot support forbearance for OSPs, given the history of abuse of some OSPs.

IV. Inmate-only telephones should not be mandated BPP requirements.

The SFNPRM (at ¶49) invites comment on whether the public interest would be better served by some alternative remedy for prison inmate calling, including but not limited to requiring full price disclosure to the party to be billed for a collect call before connecting the call for inmate calls. GTE sees no benefit from mandating BPP requirements for inmate-only telephones.

The SFNPRM (at ¶48) offers two primary reasons for considering inmate calls differently: (1) neither TOCSIA nor the Commission's rules require telephones for use in prisons to be unblocked and (2) prisons often install and maintain security equipment for a number of legitimate reasons involving security and other government prerogatives, the cost recovery of which would force competitive prices for inmate-only telephone calls from prisons to be possibly higher than the rates of calls from ordinary locations. In its March 5, 1996 Order in CC Docket No. 94-158, the Commission acknowledged that many commenters "assert that inmate service rates have been brought under control during the past five years, that the market is highly competitive, and that inmate service providers are being called upon to meet benchmark rates that are based on those of dominant carriers for similar calls."⁵ Since this essentially describes the Commission's goal in this proceeding, there appears to be little, if any, problem with the inmate-only telephone market and GTE believes the Commission should not mandate any special BPP requirements for inmate phones.

⁵ *Report and Order and Further Notice of Proposed Rule Making*, CC Docket No. 94-158, released March 5, 1996 at 17.

CONCLUSION

For the foregoing reasons, GTE does not believe that applying benchmarks to the entire industry is necessary. The Commission has previously found that high rates have been charged by a limited number of carriers and the remedy should be directed to the abusing carriers. If the Commission decides, nonetheless, to establish benchmarks, GTE concurs in the Ameritech proposal, setting the benchmark based upon the highest rate of the three largest interexchange carriers, plus a 20% premium.

Respectfully submitted,

GTE Service Corporation and its affiliated
domestic telephone, wireless and long
distance companies

By



Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 463-5214

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